Supreme Court, U.S.
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No. 86-436

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

WALTER L. JONES, PRO SE, PETITIONER, ET AL.,

v.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL.,

(Case No. 1.)

WALTER L. JONES, PRO SE, PETITIONER, ET AL.,

v.

SIEGFRIED CONSTRUCTION CO., INC., ET AL.,

(Case No. 2)

PETITIONERS REPLY BRIEF

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QUESTIONS PRESENTED IN REPLY

1. Whether the U.S. Court of Appeals abused its discretion, and made substantial errors, and denied due process, by refusing to review the District Court's decision, and judgement that departed from the accepted and usual course of judicial proceedings, in the No One case.

2. Whether the Petitioner Pro se, as a member of the protected class, under Title VI, has constitutional standings to sue, and seek redress against those, who thorugh a conspiracy, deprived him of his individual, Title VI , civil and constitutional rights to participate on the federally funded Buffalo Subway Construction Project.

3. Whether the U.S. Court of Appeals made substantial errors, and abused its discretion, by affirming the District Court's decision, and judgement in the No. Two case, that was predicated solely upon the decisions now at issue before this Court, in the No. One case.

4. Whether the District Court Judge's impartiality might reasonable be questioned, in these civil rights cases, as to call for his disqualification, under the "Reasonable Man (Person) Standard", in both cases now before this Court.

ALL PARTIES

See (Petitioner's Appendix D, Pages 72-73).

Also see (R 42 in the No. One case), and (R 1 in the No. Two case.)

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PETITIONER'S REPLY STATEMENT TO THE RESPONDENTS' BRIEF

Respondents' Brief, in opposition suggests that the Constitutional questions regarding due process and the Petitioner's individual standings cannot be reviewed in this Court, because the District Court's decisions lack 54 (B) certification (Res. i, 8-9), although Respondents state that the questions raised by the Petition present a "substantive argument" that the District Court erred in dismissing Petitioner's individual cause of action, Respondents however,urge that Certiorari be denied, at this time. Apart from the distorted statement of events in the last paragraphs on page 3 ending on page 4 of (Res. Br. 3-4), and the distorted statement of events in the first paragraph on page 10, (Res., Br. 10), Respondents ignore the jurisdictional statement, constitutional, and statutory provisions presented in the Petition, (Pet. X - 1) that authorizes this Court's jurisdiction. Respondents further ignore the evidenc-

iary facts, and case law presented in the Petition, regarding the Petitioner's individual standings, and due process violations (Pet. 1-25). Respondents failed entirely to present any argument, or case law to rebut the Petitioner's argument, cited in case law on the due process, and standings issues now before this Court. Clarification of the relevant portions of the Record, in the No. One case are now essential, in light of the Respondents' distorted statements.

On March 30, 1981, attorney John L. Hargrave, Sr., Esq. appeared in open court, on behalf of the Corporation, and joined the Petitioner's Pro se motion to amend the Complaint, as evidenced on the District Court's docket sheet. On March 30, 1981, the District Court, from the bench, granted the Petitioner and attorney John L. Hargrave, Sr., Esq., leave to amend the Complaint, and directed service, by April 3, 1981, as evidenced on the District Court's docket sheet. On April 3, 1981, Plaintiff Jones and attorney Hargrave filed the subject, authorized

"Amended and Supplemental Complaint", which was signed by the Petitioner, on behalf of himself, and attorney Hargrave, on behalf of the Corporation (R 42).

On April 22, 1981, the District Court entered a Memorandum and Order, that was signed on April 17, 1981, as well as a Judgement, directing that the cause of action, by the Petitioner on his individual behalf was dismissed, and that the Corporation may be represented in this law suit, only by properly admitted counsel (R 53-54). The Record simply shows that no hearing was had, addressing the Petitioner's individual claims alleged in the authorized "Amended and Supplemental Complaint", before his individual claims were dismissed and terminated (R 42-54).

On September 16, 1985, the District Court Judge, before activating the Court's recorder, "flatly" denied the Petitoner Pro se, to be heard, on a duly scheduled motion, seeking individual reconsideration, subsequently, the Petitioner moved, for the District Court Judge's disqualification, upon the Reasonable Man (Per-

son) Standard. 28 USC §444, (R266, 267, 269, 314-321, 340 Pg. 5), Now see (CA. BR., Ad 7), Also see (R 338 Pg. 8-9, 339, Pg. 64-65).

ARGUMENT I

THIS COURT HAS THE DISCRETIONARY AUTHORITY, UNDER 28 USC §1254(1), AND U.S. SUPREME COURT RULE 17, TO REVIEW THE DISTRICT COURT'S DECISIONS THAT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AND DISMISSED THE PETITIONER'S INDIVIDUAL CIVIL RIGHTS CLAIMS, WITHOUT A HEARING, IN ACTION NO. ONE.

The Record clearly shows that the District Court Judge erroneously dismissed the Petitioner's Pro se individual civil rights claims asserted in the authorized "Amended and Supplemental Complaint", dated March 30, 1981, and filed on April 3, 1981, without a hearing, in violation of the Petitioner's, as a Pro se litigant's, fundamental, and constitutional rights to due process, and in violation of his statutory and constitutional standings to pursue his individual claims, as alleged in the authorized, "Amended and Supplemental Complaint", dated March 30, 1981 (R 42-54). Armstrong v. Manzo, 380 U.S. 545 (1965); Grannis v. Ordan, 234 U.S. 385, 394 (1914); Boddie v. Connecticut,

401 U.S. 371, 377 (1970); Haines v. Kerner, 404 U.S. 519 (1972); Cannon v. University of Chicago, 441 U.S. 677 (1979); §601 of Title VI; Const. 5th Amend; Const. 14th Amend; Art. III of Const.

Title VI has been construed by other federal Courts, as creating a private remedy, and the statute was enacted for the benefit of the class of persons, whom Petitioner is a member of, and the legislative intent was to create a private remedy, and implication of the remedy in this case is consistent with the legislative scheme and intent. Cannon v. University of Chicago, 441 U.S. 677 (1979.

ARGUMENT II

THIS COURT HAS THE DISCRETIONARY AUTHORITY, UNDER 28 USC §1254 (1), AND U.S. SUPREME COURT RULE 17, TO REVIEW THE DISTRICT COURT'S DECISION THAT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AND DISMISSED THE NO. ONE CASE, AS TO THE UNIONS, AND OTHER DEFENDANTS, UPON AN UNAUTHORIZED, "SECOND AMENDED COMPLAINT".

The Record clearly shows that the District Court Judge, after being advised of the Petitioner's position, to the contrary, and without a trial upon the merits, dropped the State, Unions, individuals, and other Defendants, from the law

suit, "without leave to further amend, and with prejudice", without the Petitoner's knowledge, and upon an unauthorized "Second Amended Complaint", dated August 14, 1981, that was filed fraudulently by a former attorney, in the No. One case, after the Court had erroneously terminated the Petitioner's claims, without a hearing, in violation of the Petitioner's fundamental, and constitutional rights to due process, (R 42, 102, 103-104, 218 Exhibits 5 and 7). Armstrong v. Manzo, 380 U.S. 545 (1965); Grannis v. Ordan, 234 U.S. 385, 394 (1914); Boddie v. Connecticut, 401 U.S. 371, 377 (1970); Wood v. Georgia, 450 U.S. 261 (1980); Cuyler v. Sullivan, 446, U.S. 335 (1980); Holloway v. Arkansas, 435 U.S. 335 (1980).

The importance and substantiability of the issues presented in the No. One case have not been denied by the respondents. Their only suggestions are that the issues are premature.

But; review here cannot be premature, where due process violations are evidenced, and was raised in Courts below, and where constitutional

standings have been terminated. Armstrong v. Manzo, 380 U.S. 545 (1965); Flast v. Cohen, 392 U.S. 83, 98, 99 (1968); Cannon v. University of Chicago, 441 U.S. 677 (1979).

In light of the Respondents' inability to face the issues presented in the Petition, without grossly distorting the facts, and the Flast decision, the need for plenary review of the actions below, are indisputable; indeed, Petitioner suggests that Summary Reversal of the decisions and judgement, in both cases, are now in order; together with granting permission to amend the Complaints. 28 USC §1653; Rotolo v. Borough of Charleroi, et al, 532 F2d 920 (1976); Local No. 1 (ACA) v. Intern. Broth. of Teamsters, 614 F2d 846 (1980).

ARGUMENT III

THE COURT OF APPEALS' AFFIRMATION OF THE DISTRICT COURT'S DECISION IN THE NO. TWO CASE, WAS AN ABUSE OF ITS DISCRETION, AND PLAIN ERROR THAT WARRANT REVIEW, AND REVERSAL BY THIS COURT.

The Record clearly shows that the District Court Judge entered a judgement, on February 12, 1985, dismissing the Petitioner's lawsuit,

in the No. Two case, in its entirety, without going to the merits, predicated solely upon the decisions now at issue, before this Court, in the No. One case. (R 1-3, 25, 39-40 in the No. Two case). Also see (Pet. App. C, Pg. 66).

The Court of Appeals foreclosed consideration of the due process issues, and the standing issue raised in the consolidated cases, by denying Mandamus, dismissing appeal, denying rehearing, and by denying amendment of Complaints, in the No. One case, and then proceeding and affirmed the District Court's decision, and judgement in the No. Two case. (CA Reply Brief 1-21 C), and its attached (Ad 22-46, 89-193). Now see (Pet. App. A).

Review, reversal, and supervision, by this Court is now therefore fundamental to the future conduct to these cases.

ARGUMENT IV

THE CASES NOW BEFORE THIS COURT PRESENT THE EXTREME CICUMSTANCES THAT JUSTIFIES THE GRANTING OF AN EXTRAORDINARY WRIT, UNDER THE REASONABLE MAN (PERSON) STANDARD, 28 USC §455, 28 USC §1651.

The District Court Judge's orders, and dec-

isions entered in the No. One case, on April 22, 1981, October 8, 1981, November 3, 1981, February 12, 1985, September 25, 1985, October 11, 1985, and October 16, 1985, were erroneous and biased, in favor of the Defendants. The District Court Judge's orders and decisions entered in the No. Two case on October 11, 1984, January 8, 1985, and February 12, 1985, were erroneous and biased, in favor of the Defendants, and show the Judge's prejudices, and vindictiveness against the Petitioner, as a Black Pro se litigant, and show the Judge's absolute disregard for the Petitioner's fundamental, civil, and constitutional rights. Flast v. Cohen, 392 US 83 (1968); Cannon v. University of Chicago, 441 U.S. 677 (1979); Armstrong v. Manzo, 380 U.S. 545 (1965); Wood v. Georgia, 450 U.S. 261 (1981); Cuyler v. Sullivan, 446 U.S. 335 (1980); Carolina v. Pearce, 395 U.S. 711 (1969); Blackledge v. Perry, 417, U.S. 21 (1974).

Accordingly, the Petition for Extraordinary Writ to District Court Judge, Hon. John T. Elfvin, under 28 USC §444 of the Reasonable

Man (Person) Standard, directing his disqualification, should be granted. 28 USC §1651; Berger, et al, v. United States, 255 U.S. 22 (1921); Whitehurst v. Wright, 592 F2d 834, 838 (5th Cir. 1979); Webbe v. McGhie Land Title Co., 549 F2d 1358 (10th Cir. 1977); Mims v. Shapp, 541 F2d 415, 417, (3rd Cir. 1976); Hodgson v. Liquor Salesman's Union, 444 F2d 1344, 1348 (2nd Cir. 1971); United States v. Holland, 655 F2d 44 (1981); United States v. Thompson, 453 F2d 527, 529 (3rd Cir. 1973).

CONCLUSION

For the additional reasons set forth in this Reply Brief, Petitioner requests that the Writs be granted, together with reversal of the orders, decisions, judgements, and mandates entered below on 4/22/81, 11/3/81, 1/8/85, 2/12/85, 9/25/85, 10/11/85, 10/16/85, 1/23/86, 5/8/86, and 8/22/86, in the respective case, reinstating Petitioner and dismissed Defendants, leave to amend Complaints, join parties, double costs and disbursements, and the transfer of the cases before another District Court Justice.

DATED:
Buffalo, New York
October 17, 1986.

Respectfully submitted,
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